

**Standard Commercial Cartage, Inc. and its Successor
and Alter Ego Standard Environmental Systems
Corp. and Local 813, International Brotherhood
of Teamsters, AFL-CIO. Case 29-CA-20844**

November 12, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On January 19, 1999, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondents filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Standard Commercial Cartage, Inc., and its Successor and Alter Ego Standard Environmental Systems Corp., Smithtown, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

Joanna Piepgrass, Esq., for the General Counsel.

Robert M. Ziskin, Esq., Richard B. Ziskin, Esq., and Suzanne Harmon-Ziskin, Esq. (Law Offices of Robert M. Ziskin), of Commack, New York, for the Respondents.

Jane Lauer Barker, Esq., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn, New York, on July 20, 1998. The complaint alleges that Respondent Standard Environmental Systems Corp. is the alter ego of Standard Commercial Cartage, Inc., and that Standard Environmental Systems, in violation of Section 8(a)(5) and (1) of the Act, refused to recognize Local 813, International Brotherhood of Teamsters, AFL-CIO and refused to honor the terms of the collective-bargaining agreement with Standard Commercial Cartage. In the alternative, the complaint alleges that Standard Environmental Systems is a successor employer to Standard Commercial Cartage and that, in violation of Section 8(a)(5) and (1) of the Act, Standard Environmental Systems refused to recognize Local 813 and unilaterally changed its employees' terms and conditions of em-

¹ The Respondents have implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

ployment. Respondent Standard Environmental Systems denies that it has engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party in September 1998, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Standard Commercial Cartage, Inc. (Commercial), a New York corporation, with its principal office and place of business located at 10 Fairview Avenue, Smithtown, New York, was engaged in the business of industrial waste removal until June 30, 1997. Respondent Standard Environmental Systems Corp. (Environmental), a New York corporation, with its principal office and place of business located at 10 Fairview Avenue, Smithtown, New York, is engaged in industrial waste removal. The parties agree, and I find, that at all material times Respondent Commercial and Respondent Environmental were employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 813, International Brotherhood of Teamsters, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Standard Commercial Cartage, Inc. was established in the 1960s; from 1972 it was an equal partnership between John Haynes Sr. and Robert Schuman. For years, Commercial had a collective-bargaining agreement with Local 813, IBT, AFL-CIO for a unit of "chauffeurs and helpers." The last such agreement was for a term from 1995 to 2000. Schuman died in July 1994, and his widow became executrix. The testimony establishes that she was a "no-show partner" from that time. Haynes Sr. endured a lengthy illness beginning in 1994, and he died in September 1995. His widow was the executrix of the estate. The testimony establishes that she had "no knowledge whatsoever" of the business.

The testimony of John Haynes Jr. shows that he effectively ran the business and "did everything" from the time his father fell ill in 1994. Haynes Jr. was a driver and mechanic and a manager. He decided how to handle issues relating to customers and the method of serving them and he ran the day-to-day business of Commercial. Haynes Jr. never owned shares of Commercial and he was not an officer or director. However, when Commercial sold a number of its routes in 1996, Haynes Jr. signed a "non-compete agreement" as part of the sale transaction, acknowledging that he was "in a senior management capacity" at Commercial and that he would "derive a substantial benefit from the sale" of Commercial assets.

In addition to Haynes Jr., Steven Eden helped to run the Commercial business. Eden began as a bookkeeper and he did the payroll. According to the testimony of Robert Funck, business agent of Local 813, Eden dealt with problems concerning the routes and the employees.¹ Eden was not in the bargaining unit.

¹ I credit the testimony of Funck who was straightforward and cooperative. I do not credit the testimony of Haynes Jr. where it is contradicted by more reliable testimony: as is discussed below, Haynes Jr.'s

Commercial owned trucks and waste containers. It had contracts to remove waste on various regular routes on Long Island. Commercial kept a waste container at each stop on its routes. Commercial trucks known as front-end loaders made regular rounds to empty the waste containers.² Commercial also owned large roll-off waste containers which it rented to construction contractors, businesses, or homeowners. When such a container was filled with debris or garbage, a roll-off truck would come and remove the full container. If the customer wanted a container kept at the site, an empty container would be delivered. Haynes Jr. testified that Commercial was not in the demolition business and that it never did cesspool work. However, Haynes Jr. eventually acknowledged that Commercial provided a cesspool service through another corporation called Edgewood Carting. Edgewood was owned equally by Haynes Sr. and Schuman; the actual cesspool work was done by Haynes Jr., Eden, Guy Gorziano, and Vincent Heinrichs.³ Haynes Jr. also acknowledged that Commercial provided demolition services; he claimed that the demolition was subcontracted to other companies but that Commercial provided the containers that were used on the jobsite.

The Commercial letterhead proclaimed that it was in the business of "industrial waste removal." Its invoice documents stated its business as "complete cesspool service, containers for cleanups and construction." The Commercial advertisement in the Yellow Pages listed its business as "container service" and it was adorned with an illustration of a roll-off truck and container. On either side of the illustration, the Commercial services were listed as "complete container service . . . rubbish removal . . . debris removal . . . dozer & backhoe service . . . complete recycling service . . . land clearing & demolition service." The Commercial toll free number was given as 800-339-5290 and the local number was 862-9393.

Local 813 Business Agent Funck testified that on October 22, 1996, a member of the Commercial bargaining unit called him to say that he had learned that all the Commercial employees were going to be laid off and that a new company called Standard Environmental was going to be formed. On October 23, Funck met with Eden and said he had heard that the company was changing its name. Funck asserted that the new company was obligated to bargain with the Union. Eden replied that all the Commercial employees would be laid off and that he would take applications from them and consider them for work at Environmental. Eden said the men would not receive the same pay or benefits. He told Funck that the new company would not bargain with the Union unless it organized the employees.

In October 1996, there were eight employees in the Commercial bargaining unit of whom seven drove trucks. Four of the men drove roll-off trucks, two men drove front-end trucks, and one man was out on workers compensation. On October

testimony on various points was shifting and contradicted by documentary evidence. Haynes Jr. was not a candid witness.

² A device on the front of the truck would lift the container and tilt it so that the waste emptied into the truck. Then the empty container would be replaced at the stop.

³ Edgewood performed cesspool work and it had a route to pick up residential garbage. The Edgewood employees had never been represented by a union. After the deaths of Haynes Sr. and Schuman, Haynes Jr. and Eden purchased the cesspool business of Edgewood Carting and the Schuman family purchased the residential route and two trucks of Edgewood Carting.

24, the Union received a layoff notice for five of the men—Greg Medwig, Vincent Matouzzi, Henry Messana, William Edholm, and Glenn Mischler. Commercial continued to operate until June 30, 1997, and it continued to remit dues to the Union for the two remaining unit members—Haynes Jr. who worked in the office and Thomas Ciancerelli who drove a front-end truck.⁴ On October 24, 1996, Funck sent a letter to Commercial grieving a violation of the collective-bargaining agreement with Local 813 and demanding that the layoffs be canceled. The letter complained that Commercial had failed to adhere to the contractual requirement that any sale or transfer of work should guarantee that employees would continue to receive the terms and conditions of employment specified in the bargaining agreement.

Funck testified that in October 1996, Commercial had four front-end trucks and four to six roll-off trucks in regular use. The trucks were blue with the Commercial name and address on the door.

On October 9, 1996, Commercial sold its regularly recurring monthly routes to collect solid waste in the towns of Islip, Brookhaven, and Smithtown together with the containers at each stop and two front-end loader trucks. The sale did not include "municipal bids, County, parks and beaches and school districts." The buyer, SSC Corp., is an unrelated corporation.

Standard Environmental Systems Corp. was formed in 1994 by Haynes Jr. and Eden who are its owners, officers, and directors. Haynes Jr. testified that since 1996 Environmental operated out of the same location as Commercial but he thought that at first it operated out of his home. I do not credit this inexact testimony. Haynes Jr. testified that after Haynes Sr. became ill in 1994 he "did everything" for the Commercial business. Since Haynes Jr. had a full-time managerial job at Commercial, I find that it is more likely that Environmental operated out of the Commercial location since sometime in 1994. Haynes Jr. testified that 90 percent of Environmental's work was demolition and land clearing and that it also had some roll-off work. Until October 1996, Environmental owned one bulldozer, one roll-off truck and eight roll-off containers. Haynes Jr. testified that the Environmental employees were himself, Eden, Vincent Heinrichs, and Thomas Ciancerelli, a part-time worker. Haynes Jr. and Eden operated the bulldozer; Haynes Jr., Heinrichs, and Thomas Ciancerelli operated the roll-off truck. Environmental has never been signatory to a collective-bargaining agreement with a labor organization.

The Environmental letterhead states its business as "industrial waste removal and cesspool service." Its invoice states its business as "complete cesspool service—backhoe—bulldozer rental—containers for clean-ups and construction." The Environmental Yellow Pages advertisement lists its business as "industrial waste removal" and in the lines below this the services are further detailed as "roll-off—cesspool service—demolition—backhoe—bulldozer rental—containers for clean-ups and construction." One half of the advertisement page is taken up by coupons offering discounts for rentals of containers ranging from 4 to 30 yards. There are three small illustrations showing a bulldozer, a backhoe, and a roll-off truck with container. The business cards of Environmental bearing the names of Eden and Haynes Jr. state the business as "industrial waste removal, roll off, cesspool service, demolition, backhoe, bulldozer rental, containers for cleanups and construction." The

⁴ T. Ciancerelli was laid off after June 30, 1977.

Environmental toll free number is the same as that used by Commercial, 800-339-5290. Three local numbers are given: the old Commercial number, 862-9393, and two new numbers, 265-5290 and 265-7100.⁵

On October 9, those assets of Commercial that were not sold to SSC were transferred to Rose Haynes, the widow of Haynes Sr. and to Haynes Jr. The transfer was effectuated by a series of transactions between the widows and children of Haynes Sr. and of Schuman. Haynes Jr. was paid a \$19,000 finder's fee in these transactions which was based on 1 percent of the sale price to SSC. The Schuman family did not receive immediate recompense for all of its share of the Commercial assets; SSC is paying for the routes it purchased from Commercial overtime and these SSC payments go to Mrs. Schuman. The contract reflecting all of these transactions states that certain property of Commercial will be transferred to "Rose Haynes or John Haynes Jr." This property includes telephone numbers, trucks, containers, and all unlisted assets. The record contains no evidence that there was any arms'-length transaction between Haynes Jr. and his mother for the transfer of Commercial property to Environmental nor does the record disclose when such a transfer was made.

Haynes Jr. testified that Environmental acquired all containers owned by Commercial that were not on the routes sold to SSC, all the trucks not sold to SSC, all tools, shop and office equipment, 18 rear end loading trucks, and a number of roll-off trucks. Haynes Jr.'s testimony on the number of trucks acquired from Commercial by Environmental was changing and hard to pin down. He testified that before the transaction, Environmental owned one roll-off truck and after the transaction it owned four roll-off trucks. Apparently, Environmental also acquired four front-end loaders and a number of front-end containers. In addition, Environmental acquired the toll-free number and two other telephone numbers of Commercial. Environmental also purchased the telephone number of Edgewood Carting along with its cesspool business and affiliated equipment.

The un rebutted testimony of Funck shows that Environmental used stickers to place its name over the Commercial name on the trucks.

Environmental has not recognized the Union and it does not apply the Commercial bargaining agreement to its employees. Funck tried to obtain signed authorization cards from the Environmental employees, but Messana told him that the men were worried about their jobs and that they would not sign the cards.

Environmental produced a partial list of its suppliers. A comparison of this list with the list of Commercial suppliers shows that of the 20 suppliers to Environmental, 7 of them also supplied goods or services to Commercial.

The record shows that Commercial had nine commercial stops and seven governmental stops on its regular routes. The contract of sale to SSC excluded the governmental stops. In addition, Haynes Jr. testified that Environmental acquired the "residual assets" of Commercial. Since the record contains no financial breakdown of Commercial's business, all that the record shows is that Commercial sold a bit more than half of its regularly scheduled stops to SSC, together with a number of containers and two trucks, and the rest went to Environmental. The record does not disclose how much of Commercial's business consisted of placing containers at locations that were not

regularly scheduled routes for the collection of refuse. Environmental was free, of course, to pursue this type of business that had formerly been handled by Commercial.

The unit members of Commercial were:⁶

Front-end truck drivers:

Vincent Matouzzi
Thomas Ciancerelli
Robert Treadwell

Roll-off truck drivers:

Greg Medwig
Henry Messana
William Edholm
Glenn Mischler

The payroll records produced by Respondent show that on October 19, 1996, after the sale of Commercial assets, unit member T. Ciancerelli was being paid by Environmental. By the beginning of November 1996, Commercial employees Medwig, Messana, Mischler, and Edholm were being paid on the Environmental payroll. These same employees also received substantial pay from the Commercial payroll at the same time. By May 1997, the following former employees of Commercial were working for Environmental:

Medwig
Messana
Edholm
Mischler

The record shows that Commercial had 10 nonunit employees. At the time of the instant hearing, five of the six nonunit employees of Environmental were former employees of Commercial.

B. Discussion and Conclusions

The criteria for finding an alter ego relationship between two entities are well recognized. They are "substantially identical" management, business purpose, operation, equipment, customers, and supervision, as well as ownership. *Advance Electric*, 268 NLRB 1001, 1002 (1984). No one factor alone is controlling. The Board also examines whether the purpose in setting up the alter ego was to evade its responsibilities under the Act, but a finding of antiunion animus is not required in order to find an alter ego relationship. Having applied the law to the facts in this case, I find that Environmental is an alter ego of Commercial.

The credible evidence shows that Haynes Jr. and Eden were effectively managing and supervising Commercial beginning at some point in 1994: Haynes Jr.'s mother had no knowledge of the business and Mrs. Schuman was a silent partner. Haynes Jr. and Eden are the managers of Environmental, the alter ego of Commercial.

Commercial, which had been owned by two now-deceased partners, was divided up between their heirs on October 9, 1996. In order to provide for the Schuman heirs, some routes and equipment were sold to SSC, and Haynes Jr. received a commission for arranging this transaction. The Haynes family retained the Commercial business site and the rest of the assets. Thus, by the time the Commercial employees were given a layoff notice on October 24, the Haynes family was the sole owner of Commercial. At some point which is not specified on

⁵ The number 265-7100 has belonged to Environmental since 1994.

⁶ I exclude Haynes Jr. who was a manager at all relevant times.

the record, Environmental became the owner of the Commercial assets.⁷ It is not controlling on the issue of alter ego that Environmental acquired only a portion of Commercial's original business. *Better Building Supply Corp.*, 283 NLRB 93, 95 (1987). Moreover, it is of no great significance that Eden did not have a prior ownership interest in Commercial. Haynes and his mother owned all the Commercial assets before they were transferred to Environmental of which Haynes is a part owner. Common ownership is not a prerequisite to a finding of alter ego status. *Fugazy Continental Corp.*, 725 F.2d 1416, 1420 (1984). Moreover, ownership by the same family is significant. *Sobeck Corp.*, 321 NLRB 259, 267 (1996).

Environmental, which had been conducting a small amount of business out of the Commercial premises since 1994, remained in the same business as Commercial and it was in the same market. Both Commercial and Environmental proclaimed themselves in the "industrial waste removal" business, providing container, demolition, and cesspool service. Environmental provides land clearing and container service to its customers. Commercial subcontracted the land clearing and provided its containers for removal of debris. Commercial provided and Environmental now provides cesspool service through Edgewood Carting. The business location is identical as is the toll-free number and most of the local telephone numbers. Many of the suppliers of Environmental are the same as those used by Commercial. Although Commercial sold some of its regularly monthly recurring routes to SSC, the remainder of Commercial's customers are available to Environmental as a continuing source of customers. Further, Environmental performs the demolition, cesspool, and debris removal work which Commercial formerly performed. Environmental acquired the majority of Commercial's equipment: Environmental acquired four of the six front-end loader trucks owned by Commercial together with a number of containers, and it acquired all of Commercial's roll-off trucks and roll-off containers and all of its rear loading trucks. In addition, Environmental acquired all of Commercial's tools, shop and office equipment, and telephone numbers. Environmental is using the equipment it acquired from Commercial to conduct its business; the trucks have been changed only by having the Environmental name pasted over the Commercial name.

I find that Environmental violated Section 8(a)(5) and (1) of the Act when Eden told Funck that Environmental would not bargain with the Union and that it would not apply the terms of the current collective-bargaining agreement to its employees, and by failing to apply the terms of the contract to its unit employees.

CONCLUSIONS OF LAW

1. Respondent Standard Environmental Systems Corp. is the alter ego of Respondent Standard Commercial Cartage, Inc.

2. By refusing to recognize Local 813, International Brotherhood of Teamsters, AFL-CIO, and by refusing to apply the collective-bargaining agreement to their unit employees, Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

The appropriate unit of employees is :

All chauffeurs and helpers at all locations of Respondents excluding guards and supervisors as defined in the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents must take actions that will fulfill their contractual obligations, including but not limited to, reimbursing employees for any loss of wages and benefits because of Respondents' failure to apply the terms and conditions of the collective-bargaining agreement, with interest, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), and making contractually established payments to any trust funds established by the collective-bargaining agreement in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). No evidence having been presented concerning Respondents' failure to make benefit payments, such matters are left to the compliance stage of this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

ORDER

The Respondents, Standard Commercial Cartage, Inc. and its alter ego Standard Environmental Systems Corp., Smithtown, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to recognize and bargain collectively with Local 813, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the appropriate unit, and failing to apply the collective-bargaining agreement to the employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following unit:

All chauffeurs and helpers at all locations of Respondents excluding guards and supervisors as defined in the Act.

(b) Give full effect to the 1995-2000 collective-bargaining agreement including making whole the employees for any loss of wages and benefits as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at their facility in Smithtown, New York, copies of the attached notice

⁷ Indeed, it is not clear whether Commercial transferred all of its assets to Environmental and it is not clear whether Commercial has ceased to exist as a legal entity.

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 23, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

⁹ If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Local 813, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of our employees in the following appropriate unit:

All chauffeurs and helpers at all of our locations excluding guards and supervisors as defined in the Act.

WE WILL NOT fail to apply the collective-bargaining agreement to our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request recognize and bargain with Local 813 as the exclusive representative of our unit employees.

WE WILL give full effect to the 1995-2000 collective-bargaining agreement.

WE WILL make whole our unit employees for any loss of wages and benefits as set forth in the decision, with interest.

STANDARD COMMERCIAL CARTAGE, INC. AND ITS
ALTER EGO STANDARD ENVIRONMENTAL SYSTEMS
CORP.